IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 306 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

STATE OF GUJARAT - Appellant(s)

Versus

RAMKISHAN DIVANPAL & 1 - Opponent(s)

==========

Appearance :
MR PR ABICHANDANI Ld. APP for Appellant(s) : 1,
None for Opponent(s) : 1 - 2.
==========

CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 01/09/2005

ORAL JUDGMENT

1. The State of Gujarat has preferred this appeal under sec. 378 of Code of Criminal Procedure to challenge the order of acquittal passed by ld.Metropolitan Magistrate,

Court No. 20, Ahmedabad on 31.12.1992 in Criminal Case No. 769 of 1992 in favour of present respondents. The respondents were prosecuted for the alleged commission of offences made punishable under sec. 325, 504 and 323 read with sec. 114 of IPC and also for offence under sec. 135(1) of the Bombay Police Act.

2. According to the prosecution, on 21.2.1984 at about 5.00 O'clock in the morning, while informant Buddhilal Jagannath was sleeping in the front portion of his house, respondent no. 1 Ram Kishan came there after answering the call of nature. He picked up the cot belonging to the informant and threw it on the side. Since there was loud noise, the informant woke up and he asked respondent no. 1 that why he threw away his cot. It is the case of the prosecution that the informant got enraged and he started speaking filthy abuses. The informant asked him not to speak abuses. Respondent no. 1, therefore, went home and brought stick and caused injuries by giving blows on the wrist of the right hand. It is further alleged that respondent no. 1 also gave a slap on the face of the informant and gave him violant push, as a result of that, he fell on the cot and received injufies on both

the legs. According to the informant, one person having beard whose name at that time he did not know, came and he started giving fist and kick blows to him. On hearing the shouts, several persons came there and they rescued him from further beating. Thereafter, the informant went to his brother-in-law's place and from there they went to Shardaben Hospital where he was admitted in the Orthopaedic ward. On medical check up, it was found that there was fracture of bone of the right hand. He thereafter approached the police who recorded the FIR and commenced the investigation. In the course of investigation, the police arrested respondents on 24.2.1988, but later on, they were released on bail. On completion of usual investigation, the police submitted charge-sheet in the Court of Ld. Matropolitan Magistrate, Court No. 10, Ahmedabad on 21.4.1988.

3. At the trial, ld. Magistrate framed charge against the respondents at ex. 7. They were charged for committing offences made punishable under sec. 325, 504, 327 read with sec. 114 of IPC and also for the offence under sec. 135(1) of the Bombay Police Act. The respondents pleaded not guilty to the charge and claimed to be tried.

4. The prosecution, in support of its case, examined 10 witnesses and also produced documentary evidence in the form of FIR, various panchanamas, medical certificate, X-rays, etc. Upon completion of recording of the evidence, Ld. Magistrate recorded further statement of respondents under sec. 313 of Code of Criminal Procedure. It appears that ld. Magistrate recorded a common further statement of both the respondents. They have denied the allegations levelled against them. In reply to the last question, they have stated that one day prior to the date of incident, respondent no. 1 – Ramkishan Divanpal had gone to attend the duty and respondent no. 2 was present. At that time, informant had given one fist blow on the face of wife of respondent no. 1 and also fist blows on the stomach, for which, later on a complaint had been lodged. According to respondent no. 2, he was cited as a witness in that case. According to respondents, to retaliate, the informant has filed false case against them.

5. At the end of the trial, ld. Magistrate came to the conclusion that the evidence of the prosecution witnesses was not trustworthy and reliable and, prosecution was not able to prove its case against

respondents. Ld. Magistrate, therefore, by judgment dated 31.12.1992 acquitted the respondents of all the charges levelled against them. Hence, the present appeal.

6. I have heard Mr. PR Abichandani ld. APP for the appellant-State. Respondents though served, none is present. Mr. Abichandani has challenged the judgment by submitting that the ld. Magistrate has committed an error in passing the order of acquittal in favour of respondents. According to him, there was ample evidence on record on which the order of conviction could have been based by the trial court. He has submitted that the evidence of the informant Buddhilal Jagannath who himself has received injuries adequately stands corroborated by the evidence of other witnesses and in particular the medical evidence in the form of X-ray and the oral evidence of Medical Officer who gave him treatment. Lastly, he has submitted that this appeal deserves to be allowed and the respondents are required to be adequately punished for the offence, as stated above.

7. With a view to reappreciate the evidence, Mr. Abichandani has taken me through the record of the appeal. PW -1 Buddhilal Jagannath Ex. 5 is the

informant and the injured witness. According to him, on 21.2.1988, at about 5.00 O'clock in the morning, he was sleeping in the frontage of his house in Ganesh clony, at that time, respondent no. 1 threw away his cot which was lying there. He, therefore, woke up and asked respondent no. 2 as to why he threw away his cot. He has further stated that respondent no. 1 started giving him flithy abuses and he immediately left the place and returned shortly thereafter and attacked him with stick and gave blows on the right hand and caused injury. It is stated by him that respondent no. 2 was also present and he gave fist blow and then lifted him and threw him on the cot. According to the witness, both the respondents had thrown him on the cot, he therefore, raised shouts calling for the help. His brother-in-law Ram Prasad who was residing behind the house of witness, came there. With help of other persons, they rescued witness and took the witness to the hospital. According to the witness, at hospital his X-ray was taken. He has stated that he knew the accused persons and he also identified the stick shown to him by the prosecution. In cross-examination on behalf of respondents, he has admitted that he did know who threw the cot. He has further denied that there was a

dispute going on between them on account of water. He has also denied that he had beaten wife of respondent no. 1. He has also denied that in respect of the said incident, a criminal case was filed agianst him in the court. The witness, however, states that it was true that the case filed against him was false. He has denied that he had received injuries as he had fallen down during the scuffle. He has also denied that he has not stated in the FIR that respondent no. 2 had given him fist blows. He has, however, admitted that in the FIR the names of other assailants are not there. According to him, both the respondents with others threw him on the ground. He has denied that he has filed a false case.

8. PW-2 – Shivnath Buddhilal Ex. 7 appears to be an eye witness. He has stated in his evidence that incident took place about two years prior to the date of recording of his evidence. At thattime, informant Buddhilal was sleeping on his cot. He heard about 4 to 5 persons shouting and, therefore, he woke up. All the persons came there and started beating Buddhilal. Out of these 5 persons, 2 persons were the present respondents. Both of them had stick with them. Respondent no. 1 had given blow on the right hand of

Buddhilal. Buddhilal raised shouts, he was, therefore, taken to the back side of his house in order to save him. It is the say of the witness that both the respondents had pushed the injured Budhhilal on the cot and they did not allow him to get up. In the cross-examination, he has stated that when he went to the spot, respondents had gone away after beating the injured. He was apprised of the incident by the informant. Witness, of course, immediately stated that he had also seen the incident. It is the say of the witness that both the respondents had given blows with stick on the hand of the informant. Such beating continued for 10 to 15 minutes, but he was unable to say that how many blows were given. He has denied that in the statement recorded by the police, he had not stated that respondents had given stick blows to the informant. He has also denied that in his police statement, he has not stated that about 5 persons came there and assaulted the injured. He has, however, admitted that he has not stated that both the respondents had pushed the informant against the cot.

9. PW-3 – Ramasharesing Mangalsinh – Ex. 8, stated that on the date of incident he heard shouts. He came out of

the house and saw respondent no. 1 holding stick and he was beating the informant. There were about 20 to 25 persons present. In the cross-examination, he has stated that since the informant raised shouts, he went there.

10. PW-5 – Virendra Kanaiyalal Shah – Ex. 10 is an employee of Shardaben Hospuital. He identifies the signature on the medical certificate which is taken on record at ex. 11. According to the witness, Dr. Hriday Vaidya who examined the injured was no longer in the employment of Shardaben Hospital.

11. The prosecution has, however, later on examined Dr. Hriday Vaidya at ex. 12 as PW-6. He has deposed about the injuries received by the informant. According to the witness, there was swelling on the middle portion of the right hand between elbow and wrist. On applying pressure, the patient complained of pain. According to the witness, there were fractures of radius and ulna bone of the right hand. In his opinion, these injuries, could be caused with stick. In the cross-examination by the defence, he has stated that in the certificate it is not mentioned who brought the patient. It was also not mentioned at what time he was brought and at what time he was examined. The witness has admitted that he

did not record in the medical certificate the case history. He has further admitted that there was no injury on the elbow. He has accepted the suggestion of the defence that if a person fell on the wooden frame of the cot, he would receive such injury.

12. PW-7 – Ramanand Jamadar Rai Ex. 13 is the panch witness in connection with the seizure of the muddamal stick. He has not supported the prosecution.

13. PW-8 – Dr. Gargeya Sutariya Ex. 15 has been examined to produce the X-ray of the right hand of the informant. The witness has stated that there were two fractures on the right hand of two bones just below the elbow. In the cross-examination, he has stated that no patient go to him for medical treatment.

14. PW-9 – Patel Suresh Purshottambhai Ex. 18 is a panch witness. Nothing turns on his evidence.

15. PW-10 Police Constable Ramanbhai Viththalbhai is examined at ex. 20 by the prosecution to produce the notification issued under the provisions of Bombay Police Act prohibiting carrying of Arms.

16. This was the oral evidence the prosecution had relied on. It appears that the Investigating Officer has not been examined.

17. Having carefully scrutinized the aforesaid evidence

and having perused the judgment of the trial court, it clearly appears that the informant had received injuries on his right hand of the nature of two fractures, The question is whether these fractures have been caused by the present respondents. The evidence of the informant shows that while he was sleeping in the front of his house at about 5.00 O'clock in the morning, respondent no. 1 threw away his cot. He, therefore, woke up and immediately thereafter respondent no. 1 gave filthy abuses and also after bringing stick from his house assaulted him with stick. Respondent no. 2 came there and he too attacked him and caused him injuries and threw him on the cot. However, if the evidence of these witnesses is appreciated in light of other evidence on record, there is great variance between two versions namely the version of the informant and the version of other witnesses. Further, even the evidence of informant on its own is not reliable and trustworthy so as to base conviction of respondents. The reason is that there is previous enmity between the two, namely, respondent no. 1 and the informant. It is quite probable that on the date of incident, some scuffle might have taken place on account of previous dispute in which the informant

might have sustained a fall. So far as the fact regarding fall on the cot is concerned, the informant admits it. It is his say that he was thrown on the cot by both respondents. It is, therefore, quite possible that in the process his hands might have banged against wooden frame of the cot which might have caused him these injuries. So far as the evidence of informant is concerned, he speaks only of one blow and that too on the wrist. At least that is his version in the FIR.The medical record shows that there was no fracture of the wrist. Further, there were two fractures on the middle portion of the right hand. There is nothing on record to show that by one stick blow, these two fractures could have been caused. It is not disputed by the informant that while falling on the cot, he had sustained injuries. Of course, according to him, injuries were on the leg, but the medical evidence does not support this say of the informant. If the evidence of informant is viewed in the light of other evidence of other witnesses, it makes the version of the informant very doubtful. So far as the evidence of Shivnath Buddhilal is concerned, it states that there were 5 persons who assaulted the injured, out of them, 2 were present respondents. He further states that both

the respondents had sticks and respondent no. 1 had given one blow on the right hand of the informant. So far as the evidence of informant is concerned, he only speaks of two assailants, namely, present respondents and he does not speak of respondent no. 2 having any stick with him, on the contrary, according to him, he had assaulted him with fist and kick blows and caused him injuries on the face. The medical evidence shows that there was no injury on the face. Again if the evidence of informant is viewed in the light of evidence of PW-3 Ramasharesing Mangalsinh, there is noteable discrepancy between them. According to Ramasharesing Mangalsinh, at the time of incident, there were about 20 to 25 persons present, whereas, according to the informant, only 2 or 3 persons were present. So far as Shivnath Buddhilal's evidence is concerned, he states that both the respondents had given stick blows on one hand of the informant and the beating continued for about 10 to 15 minutes. If that be so, the hand of the informant would have been broken into pieces. Thus, the evidence of the informant does not receive any corrobaration either from the oral evidence of the eye witnesses or from the medical evidence. It is not that the evidence of sole witness

namely the informant cannot be relied upon for basing conviction, however, if the back-ground of the enmity between the two, coupled with the fact that there was some incident on the previous day in which the wife of respondent no. 1 was beaten by the informant, the evidence of informant cannot be accepted as face value. It needs to be corroborated by other independent evidence. As already seen, the other evidence does not corroborate the version of the informant and, on the contrary, it gives different picture of the incident. The case of the prosecution, therefore, becomes very doubtful.

18. Since this is an appeal against the order of acquittal and upon reappreciation of the evidence, if I find that the conclusion drawn by the trial court cannot be termed as perverse and unreasonable, there is hardly any scope for me to interfere with the order of acquittal. May be other view is possible, but when the view taken by the trial court is not unreasonable, this court cannot disturbed the order of acquittal. This appeal has therefore, no merits and is dismissed.

(AKSHAY H. MEHTA, J.)

mandora/